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NO. 97071-8

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

STEVENS COUNTY DISTRICT COURT JUDGE,

Appellant.

AMICUS CURIAE MEMORANDUM OF
DISTRICT AND MUNICIPAL COURT JUDGES ASSOCIATION

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I. INTRODUCTION

The Stevens County Superior Court asserted authority beyond its jurisdiction. The Stevens County District Court resisted. Feuding judges issued conflicting orders in criminal cases, causing confusion and threatening safety.

This dangerous disorder could be repeated around the state if the Court of Appeals decision is affirmed. That decision allows Superior Court judges to hear preliminary appearances, issue orders and schedule hearings *in District Court cases*. As illustrated in Stevens County, shifting authority within a case between district and superior courts can cause confusion, scheduling conflicts and duplicative hearings, while casting a cloud over the validity of orders.

In authorizing Superior Court intervention in District Court cases, the Court of Appeals used the wrong analytical framework, as if dealing with separate prosecutions of the same charge in two courts. This is not a dual prosecution case, nor does it present any dispute about the subject matter jurisdiction of Superior Courts. The issue is whether the Superior Court has authority to act *as a District Court*. It does not. The Court of Appeals failed to resolve or even acknowledge the question.

The visiting judge in Stevens County Superior Court got it right. A District Court is not required to recognize orders in its own cases unless

the orders are signed by duly elected or authorized judges *of the District Court* or issued by an appellate court. Because there is no rule, statute or constitutional provision empowering a Superior Court to issue orders for other courts, this Court should reverse the Court of Appeals and affirm the trial court.

II. INTEREST AND IDENTITY OF AMICUS PARTY

The District and Municipal Court Judges Association (hereafter “Judges Association”) is established pursuant to RCW 3.70.010, which says:

There is established in the state an association, to be known as the Washington state district and municipal court judges' association, membership in which shall include all duly elected or appointed and qualified judges of courts of limited jurisdiction, including but not limited to district judges and municipal court judges.

Under RCW 3.70.040, the Judges Association has the following duties:

- (1) Continuously survey and study the operation of the courts served by its membership, the volume and condition of business of such courts, the methods of procedure therein, the work accomplished, and the character of the results;
- (2) Promulgate suggested rules for the administration of the courts of limited jurisdiction not inconsistent with the law or rules of the supreme court relating to such courts;
- (3) Report annually to the supreme court as well as the governor and the legislature on the condition of business in the courts of limited jurisdiction, including the association's recommendations as to needed changes in the organization, operation, judicial procedure, and laws or statutes implemented or enforced in these courts.

The Judges Association is interested in this case because it will affect the ability of courts of limited jurisdiction to control their own cases, schedules and procedures and to administer justice in an orderly manner. The Judges Association is concerned that the Court of Appeals decision, if affirmed, will result in conflicts between Superior Courts and District Courts across the state and invite challenges to the validity of preliminary orders. The Judges Association wants to avoid the confusion that would inevitably result from Superior Court judges issuing orders in District Court cases. The Judges Association submits this brief in the interest of protecting public safety and the fair and orderly processing of criminal cases.

III. STATEMENT OF THE CASE

The Judges Association adopts the Statement of the Case on pages 1-5 of the Appellant's Supplemental Brief. To illuminate practical implications of the case, additional facts are briefly summarized herein.

This appeal concerns a February 5, 2018 Administrative Order Re: Preliminary Appearances signed by both judges of the Stevens County Superior Court. CP 41, 45. The Administrative Order noted that preliminary appearances of criminal defendants are "customarily heard in District Court." CP 41. However, the Administrative Order decreed that

the Stevens County District Court could no longer handle preliminary appearances, and “effective immediately” the Superior Court would handle all such appearances. CP 44-45. In taking over preliminary appearances, the Superior Court judges made no distinction between arrestees charged in District Court and those charged in Superior Court. CP 41-45. The Superior Court judges directed the Stevens County Sheriff to serve the Administrative Order on the District Court Judge. CP 45.

On the same day as that Administrative Order, Superior Court Judge Jessica Reeves heard a first appearance of a man held on charges of driving with a suspended license, a gross misdemeanor. CP 21. Judge Reeves signed a “3.2 Hearing Order” ordering the man to “appear at the Stevens County District Court” that day at 1:30. CP 34-36. Although signed by a Superior Court judge, the Order was captioned: “District Court of Washington County of Stevens.” CP 34. Stevens County Deputy Prosecutor Will Ferguson, who attended the hearing, later testified: “The District Court refused to file the 3.2 Hearing Order, even though it was a District Court form and was duly signed by a Superior Court judge.” CP 21. He added that “[u]nbeknownst to the State,” the District Court Clerk issued a summons in the same case setting a District Court hearing for February 22, 2018, conflicting with Judge Reeves’ order for a District Court hearing on February 5, 2018. CP 22. Thus, two different courts

scheduled the same kind of hearing for the same man on two conflicting dates. CP 21-22, 34-36. Meanwhile, in two other cases, the District Court Judge ordered appearances at 1:30 that day although “she had been commanded by the Superior Court” to set them at noon. CP 22.

A few days later on February 9, 2018, the Superior Court ordered release of an inmate from the Stevens County Jail at around noon, but the inmate was still in custody at 2:29 p.m. when the District Court gave a conflicting order not to release him because “they were having a hearing in reference to a No-Contact Order at 3:00 p.m.” CP 121. The jail followed the Superior Court’s order and released the inmate despite the District Court’s need for his appearance later that day. *Id.* The District Court had set the 3 p.m. hearing out of concern that the Superior Court’s no-contact orders for the inmate, which were supposed to protect “victims involved in the incident,” were not valid. CP 117-118. More specifically, the District Court concluded the orders were “unlawful” because they were issued “under a District Court heading with a District Court Cause No.” by a Superior Court judge, and because no Superior Court judge or commissioner had not been sworn in as a pro tem judge of the District Court. CP 118. See also CP 103-104 (on the District Court’s Domestic Violence No-Contact Order form, the District Judge’s name was crossed out and “Superior Court Commissioner” was handwritten at the signature

line). The District Court further determined that, because the Superior Court had released the inmate and only the “jurisdiction authorizing release” could prohibit him from contacting the victim (per RCW 10.99.040), it was too late for the District Court to issue a valid no-contact order in that case. CP 118-119.

Meanwhile, the Stevens County Prosecutor petitioned the Superior Court for a writ of mandamus compelling the District Court to accept and enter Superior Court orders issued in District Court cases. CP 15. In hearing the writ petition, visiting judge John Strohmaier said: “what I’m concerned about is...having people think there’s protection orders when there’s not.” VRP 46. He asked Mr. Ferguson, the deputy prosecutor, if Superior Court judges can “dictate” hearing times in District Court. VRP 41. Mr. Ferguson said: “They essentially look at the District Court’s calendar – I mean....it’s public knowledge.” VRP 40.

In a Memorandum Opinion denying the writ, Judge Strohmaier framed the primary question as “whether the district court must allow the superior court to enter orders in district court.” CP 177. The answer was no. The trial court found no rule or other authority for a Superior Court judge “to conduct hearings in district court and enter orders in district court,” or to “command” the District Court to “change its own docket or the time of its hearings.” CP 177. The Memorandum Opinion said:

Furthermore, if a superior court could sign orders in the district court whenever a district court defendant is in-custody and needs to be brought before the court, it could cause uncertainty, inconsistency, and may cause a conflict if the defendant files an appeal to the superior court...

This holding does not limit the superior court to preside over preliminary appearances on defendants charged with misdemeanors/gross misdemeanors and to try such cases in superior court on cases filed in superior court, but any such hearings would need to be held in the superior court.

CP 177-178.

In reversing, the Court of Appeals did not address the question answered below: “whether the district court must allow the superior court to enter orders in district court.” CP 177; *State v. Stevens County Dist. Court Judge*, 7 Wn.App. 927, 436 P.3d 430 (2019). Rather, the Court of Appeals addressed whether the priority of action doctrine – which holds that “the court which first gains jurisdiction of a cause retains exclusive authority to deal with the action until the controversy is resolved” – precludes the Superior Court from holding a preliminary appearance hearing in a District Court’s criminal case. 7 Wn.App. at 930, 934. The Court of Appeals held that a preliminary appearance is “not a critical stage of a criminal prosecution” and has “no preclusive effect” on the criminal trial, and therefore the priority of action doctrine does not prevent the Superior Court from handling it in a District Court case. 7 Wn.App. at 930, 935.

IV. ARGUMENT

A. The Court of Appeals Answered the Wrong Question.

1. **The trial court decision was not based on the priority of action doctrine.**

The Court of Appeals wrongly characterized the trial court's decision as hinging on the "priority of action" doctrine. *Stevens Co. Dist. Judge*, 7 Wn.App. at 932. The Court of Appeals said: "Citing the priority of action rule, the visiting judge denied the State's petition....[T]he judge reasoned that a preliminary appearance is part of a criminal case and once the district court assumes jurisdiction of a case through a filed criminal charge, the superior court is prohibited from exercising jurisdiction." *Id.* The Court then devoted the rest of its opinion to knocking down what it thought was the trial court's reasoning. *Id.* at 932-936.

In fact, the priority of action doctrine was *not* the basis of the trial court decision. Judge Strohmaier merely noted it is the "majority view" that "in the absence of a statute giving one or the other courts exclusive jurisdiction, the one first assuming jurisdiction is entitled to exercise it to the exclusion of the other." CP 176. However, his Memorandum Opinion stated that which court "first assumed the case" would matter "[i]n the event that there are cases filed in both courts involving the same charges." CP 178. Judge Strohmaier explained that "the Stevens County Superior Court is not attempting to proceed with multiple proceedings" on the same

charges, and therefore “the issue of granting either the Stevens County District Court or the Superior Court exclusive jurisdiction depending on who first assumed the case *does not appear to be relevant.*” CP 176-177 (italics added). Thus, the priority of action doctrine was not the reason for denying the writ of mandamus, and the Court of Appeals analysis was off the mark.

2. Rewriting the priority of action doctrine was unwarranted and unwise.

For more than a century, this Court has applied the priority of action doctrine when the same claims or charges are brought in two courts. *Territory of Klee*, 1 Wn. 183, 23 P. 417 (1890) (probate courts in King and Pierce counties issued rulings regarding the same estate); *State ex rel. Harger v. Chapman*, 131 Wn. 581, 230 P. 833 (1924) (a gross misdemeanor charge was filed first in District Court and then in Superior Court); *State ex rel. Greenberger v. Superior Court of King County*, 134 Wn. 400, 235 P. 957 (1925) (two Superior Courts appointed guardians for a minor); *State v. Cummings*, 87 Wn.2d 612, 555 P.2d 835 (1976) (fraud charges were filed first in Seattle District Court, then in Superior Court); *Yakima v. Int’l Ass’n of Fire Fighters, Local 469*, 117 Wn.2d 655, 818 P.2d 1076 (1991) (a city brought a declaratory judgment action in Superior Court concerning issues already pending before the Public Employment

Relations Commission); *Seattle Seahawks v. King County*, 128 Wn.2d 915, 913 P.2d 375 (1996) (parties filed actions concerning the same contract dispute in different Superior Courts on the same day).

Greenberger explained the rule:

It is an accepted principle that, when a court of competent jurisdiction has become possessed of a case, its authority continues, subject only to appellate authority, until the matter is finally and completely disposed of, and no court of coordinate authority is at liberty to interfere with its action.

134 Wn. at 401. The principle “is essential to the proper and orderly administration of the laws,” and is “enforced to prevent unseemly, expensive and dangerous conflicts of jurisdiction and of process.” *Id.*, quoting *MacLean v. Wayne Circuit Court*, 52 Mich. 257, 18 N.W. 396 (1884). “The country has witnessed some such conflicts in which Federal and state courts of coordinate powers have unguardedly or unadvisedly undertaken to hamper or restrain each other’s action, and the mischiefs of which such cases are suggestive are quite as likely to arise when courts existing as part of the same system intrude with their process upon each other’s authority.” *Id.* at 401-402.

The priority of action rule applies when two cases are identical as to subject matter, parties and relief. *Yakima*, 117 Wn.2d at 675; *Sherwin v. Arveson*, 96 Wn.2d 77, 80, 633 P.2d 1335 (1981). This identity “must be

such that a final adjudication of the case by the court in which it first became pending would, as res judicata, be a bar to further proceedings in a court of concurrent jurisdiction.” *Sherwin* at 80. In *Sherwin*, for example, this Court held that priority of action did not bar Pierce County Superior Court from deciding a 90-day involuntary commitment after King County Superior Court granted a 14-day commitment for the same people because relief in the first case was statutorily limited to 14 days. *Id.*

Here, the writ of mandamus at issue is not concerned with two cases in two courts. Rather, it deals with preliminary appearances in criminal cases filed *solely in District Court*. In fact, the Superior Court orders which the District Court refused to file were on District Court forms with District Court case numbers. The Court of Appeals nevertheless treated preliminary appearances as if they are subsequent cases filed in Superior Court concerning the same charges filed in District Court. *Stevens Co. Dist. Judge*, 7 Wn.App. at 930 (holding that a preliminary appearance, like a search warrant proceeding, is “not part of the same case” as the underlying criminal charge). This reasoning reflects a fundamental misunderstanding of the facts and needlessly confuses the definition of “action” for purposes of the priority of action doctrine.

An “action” is essentially synonymous with a “suit.” *Cal. Pub. Employees’ Ret. Sys. V. ANZ Sec., Inc.*, 137 S.Ct. 2042, 2054, 198 L.Ed.2d

584 (2017), citing Black’s Law Dictionary 43 (3d ed. 1933). Here, the Court of Appeals stretched the definition of action to encompass a preliminary appearance in order to justify the Superior Court stepping in and entering orders in District Court cases. This is wrong. A preliminary appearance is not an “action” or a “suit.” CrRLJ 3.2.1(d) and (e). Its purpose is “to provide the accused with an attorney and to inform her of the nature of the charges against her, her right to assistance of counsel, and the right to remain silent.” *Khandelwal v. Seattle Mun. Court*, 6 Wn.App. 323, 326, 431 P.3d 506 (2018). If the court denies release at the preliminary appearance, it must determine whether probable cause exists to believe the accused committed the alleged crime. *Id.* at 326-327; CrRLJ 3.2.1(e). Thus, a preliminary appearance is inextricably tied to the underlying criminal charge.

The Court of Appeals relied on *In Re Search Warrant for 13811 Highway 99, Lynnwood, Wash.*, 194 Wn.App.365, 378 P.3d 568 (2016) and *State v. Stock*, 44 Wn.App.467, 722 P.2d 1330 (1986), for the proposition that if a criminal proceeding is “distinct from a criminal trial and has no preclusive effect on the trial process” it can be handled in a different court than the trial court without violating the priority of action doctrine. *Stevens Co. Dist. Court Judge*, 7 Wn.App. at 934. But both of those cases involved search warrant proceedings in district or municipal

court pursuant to RCW 2.20.030 and separate related cases in Superior Court. *In re Search Warrant*, 194 Wn.App. at 372-373; *Stock*, 44 Wn.App. at 473-474. Thus, there were two “actions” in two courts, unlike here, where the preliminary appearances at issue are conducted in *the same case* and *in the same court* where charges are filed. To analyze proceedings within a single case under the priority of action rule is to stretch the meaning of “action” beyond law and logic.

Muddying the waters further, the Court of Appeals reasoned that a preliminary appearance is distinct from a criminal trial because it is not considered a “critical stage” of a prosecution. *Stevens Co. Dist. Crt. Judge*, 7 Wn.App. at 935, citing *Gerstein v. Pugh*, 420 U.S. 103, 122-23, 95 S.Ct. 854 (1975) and *State v. Jackson*, 66 Wn.2d 24, 28-29, 400 P.2d 774 (1965). But the “critical stage” analysis in *Gerstein* and *Jackson* dealt with when a defendant has a constitutional right to counsel, and the cases had nothing to do with priority of action between courts or the authority of Superior Courts to enter orders in District Courts. *Gerstein*, 420 U.S. at 122; *Jackson*, 66 Wn.2d at 25. The Court of Appeals essentially introduced an expansive new definition of “action” for purposes of the priority of action rule, opening the door to jurisdictional conflicts over any criminal proceeding that is not “critical” and has no “preclusive effect” on the trial. Rewriting the doctrine was both unwise and unwarranted by law.

B. The Real Issue is That A Superior Court Cannot Make Decisions In District Court Cases.

The actual issue presented here is correctly summarized on page 5 of Judge Strohmaier's Memorandum Opinion: "Is the district court required to comply with the superior court's administrative order and *enter the superior court orders into the district court's files?*" CP 176 (italics added). Put another way, can the Superior Court directly intervene in District Court cases, making decisions *as the District Court?* The answer must be no, if administration of justice is to be orderly, efficient and fair.

1. The Court of Appeals decision invites chaos.

The record in this case illustrates the confusion and danger that would occur around the state if Superior Courts can take over preliminary appearances in District Court cases. In several cases, the Stevens County superior and district courts ordered conflicting hearing dates. Conflicting schedules pose an unacceptable risk that criminal defendants, defense attorneys or prosecutors will miss hearings, slowing the wheels of justice, wasting resources and possibly jeopardizing public safety or the fairness of the process. The public's article 1, section 10 right to open administration of justice also is implicated when hearing dates are unclear.

Also, when courts cannot agree which court is in control, the validity of all orders is clouded, as happened with the domestic violence case in Stevens County. The record does not reveal whether the Superior

Court's insistence on signing a no-contact order for the District Court, rather than facilitating the District Court's issuance of its own order, resulted in harm to the persons needing protection. But certainly such harm was possible, especially after the Superior Court ordered the inmate's release before the District Court could hold a no-contact hearing.

Another obvious danger is that Superior Courts will schedule District Court hearings without knowing the actual availability of the District Court. Here, the State's attorney indicated that the Superior Court simply looked at the publicly posted District Court calendar rather than consulting with the District Court when setting District Court hearings. The practical challenges with one court issuing another court's orders weigh strongly against affirming the Court of Appeals.

2. The Superior Court's subject matter jurisdiction is not disputed.

The State's main argument seems to be that, because the Superior Court has constitutional authority to decide misdemeanors and gross misdemeanors, it can enter orders in such criminal cases even if they were filed in District Court. Supp. Briefing at 6-11. By the State's logic, the District Court is somehow taking power away from the Superior Court by insisting on signing the District's Court's own orders and scheduling the District Court's own hearings. *Id.* at 9. This novel assertion is baffling.

The Stevens County Superior Court can handle its own criminal cases without interference from the District Court. If Superior Court judges want to handle District Court cases in addition to their own cases, they can seek authorization to act as District Court judges pro tem. The District Court Judge does not dispute that the Superior Court has concurrent jurisdiction in misdemeanor and gross misdemeanor cases. CP 176.

The State argues: “The issue is not where a file is located or where a charge is filed; the issue is whether the Superior Court has jurisdiction to hear in-custody first appearances on misdemeanor and gross misdemeanor cases.” Supp. Briefing at 9. The State cites no authority for the proposition that “where a charge is filed” has no bearing on a court’s power to act. *Id.* A court has jurisdiction only after a party commences an action. *Lewis Co. v. Growth Mgmt. Board*, 113 Wn.App. 142, 153, 53 P.3d 44 (2002). Depending on the nature of the action, a District Court might have exclusive jurisdiction. *See, e.g., State v. Hayes*, 37 Wn.App. 786, 788, 683 P.2d 237 (1984) (Superior Court lacked jurisdiction to grant deferred prosecution). The State cites no case, law or rule establishing that an action filed in District Court is subject to Superior Court intervention simply because the Superior Court could have exercised jurisdiction if the action had been filed there.

3. A court's power extends to its own cases and courtrooms.

The Legislature has defined every court's power as follows:

Every court of justice has power—(1) To preserve and enforce order *in its immediate presence*. (2) To enforce order *in the proceedings before it*, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings *before it or its officers*. (4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct *of its ministerial officers*, and of all other persons in any manner connected with a *judicial proceeding before it*, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

RCW 2.28.010 (italics added). Similarly, every judicial officer has power to “preserve and enforce order in his or her immediate presence and in the proceedings before him or her” when engaged in judicial duties. RCW 2.28.060. These statutes defining judicial powers do not contemplate one court controlling the officers and proceedings of a different court.

Nor is there authority for one trial court to compel another trial court to relinquish jurisdiction. *Am. Mobile Homes v. Seattle-First Nat'l Bank*, 115 Wn.2d 307, 316, 796 P.2d 1276 (1990) (a Superior Court cannot order consolidation or transfer of a case that is not pending before

it). “The administration of justice would be chaotic indeed if one district court could order another to divest itself of jurisdiction and to transfer a case properly before it.” *Id.*, quoting *National Equip. Rental, Ltd. v. Fowler*, 287 F.2d 43, 46-47 (2nd Cir. 1961). The same principle applies to a Superior Court shifting a District Court’s power to itself, as attempted here. Because the administration of criminal cases “would be chaotic indeed” if the Court of Appeals ruling is affirmed, this Court should hold that a Superior Court is without authority to issue orders and set hearings in District Court cases.

V. CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeals and affirm the trial court.

Dated this 9th day of September, 2019.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on September 9, 2019, I served a copy of the foregoing memorandum and related Motion for Leave to File an Amicus Curiae Memorandum to registered parties via the Supreme Court's web portal.


KATHERINE GEORGE

JOHNSTON GEORGE LLP

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